

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF 1ST)
AMERICAN MANAGEMENT CO., INC. AS)
RECEIVER FOR MTA, LLC, d/b/a)
CENTURIAN UTILITIES FOR AUTHORITY)
TO INCREASE ITS RATES AND CHARGES) CAUSE NO. 44475
FOR WASTEWATER UTILITY SERVICE ON)
AN EMERGENCY BASIS AND THAT THE)
COMMISSION REVOKE THE CTA ISSUED) APPROVED: JUN 30 2015
ON AUGUST 30, 1995 IN CAUSE NO. 40157)
FOR SERVICE TO FOX CHASE FARMS)
SUBDIVISION IN PORTER COUNTY,)
INDIANA.)

ORDER OF THE COMMISSION

Presiding Officers:

Carol A. Stephan, Commission Chair

Gregory R. Ellis, Administrative Law Judge

On April 3, 2014, 1st American Management Co., Inc., as receiver for MTA, LLC, d/b/a Centurian Utilities ("Petitioner" or "1st American") filed with the Indiana Utility Regulatory Commission ("Commission") its Petition for authority to increase its rates and charges for wastewater utility service. 1st American pre-filed exhibits constituting its emergency case-in-chief on May 22, 2014. A Prehearing Conference ("PHC") and preliminary hearing was held in this Cause at 11:00 a.m., on May 27, 2014, in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner and the Indiana Office of the Utility Consumer Counselor ("OUCC") were present and participated. The Commission issued a PHC Order on June 11, 2014, establishing a procedural schedule regarding permanent rate relief. On July 23, 2014, the Commission issued its Order approving emergency rates on an interim basis, subject to refund pending the issuance of a Commission Order on permanent rate relief.

On September 17, 2014, the OUCC requested a stay of the procedural schedule noting a memorandum of understanding ("MOU") between the Town of Chesterton, 1st American, the Fox Chase Farms Property Owners Association, Inc. ("POA"), and Whispering Sands MHC, LLC ("Whispering Sands") for connection of Petitioner's customers to the Town of Chesterton's sewer collection system. The Presiding Officers granted the OUCC's request to stay the proceeding on September 19, 2014. On December 16, 2014, the OUCC filed a second request to stay the proceedings that was granted on December 19, 2014. On March 13, 2015, the Town of Chesterton, Indiana by and through its Utility Service Board ("Chesterton"), filed its Petition to Intervene in this Cause. Chesterton indicated it was poised to close on financing from the State Revolving Fund ("SRF") and commence construction to extend facilities to serve the Fox Chase

Farms subdivision (“FCF”). The Presiding Officers granted Chesterton’s Petition to Intervene through a docket entry issued on March 16, 2015.

On April 8, 2015, Petitioner filed a motion to amend the caption in this Cause to include a request to revoke its Certificate of Territorial Authority (“CTA”) that was issued in Cause No. 40157 for the provision of sewage disposal service to FCF. Through a docket entry dated April 9, 2015, the caption was amended to accurately reflect the relief sought in this Cause.

On April 16, 2015, Petitioner filed the verified testimony of John Marshall, the owner of 1st American and the receiver, and the verified testimony of Nathan Howell of Midwest Contract Operations, Inc. (“MCO”), which provides operations assistance for 1st American. Also on April 16, 2015, Chesterton filed the verified testimony of Terry L. Atherton, the Utility Superintendent for Chesterton, and Theodore J. Sommer of London Witte Group, LLC, which provides financial advice and accounting services for Chesterton. The OUCC filed the testimony of Margaret A. Stull, a Senior Utility Analyst in the Water/Wastewater Division, on April 22, 2015. On April 23, 2015, Petitioner filed the verified supplemental testimony of Nathan Howell and the verified testimony of Michael Mettler, the Director of the Indiana State Department of Health’s (“ISDH”) Environmental Public Health Division.

The Commission issued a docket entry on April 27, 2015, requesting information from the OUCC regarding four options for sewage service available to FCF and whether Chesterton was the best option. The OUCC filed its response on May 12, 2015. The Commission issued a docket entry on April 30, 2015, requesting information from the Petitioner and Chesterton regarding the decommissioning of FCF’s treatment system. Petitioner and Chesterton filed their respective responses on May 7, 2015.

On May 12, 2015, Petitioner filed its motion requesting that the Commission take administrative notice of Commission Orders issued in Cause Nos. 40157, 41741, and 44262. The Commission held an evidentiary hearing in this Cause at 9:30 a.m. on May 13, 2015, in Room 222, PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner, the OUCC, and Chesterton were present and participated. No members of the general public appeared or sought to testify at the hearing. Chesterton’s request for administrative notice of Commission Orders was granted at the evidentiary hearing. The testimony and exhibits of the Petitioner, Chesterton, and the OUCC were admitted into the record without objection. At the evidentiary hearing, Chesterton also requested the Commission take administrative notice of the OUCC’s Verified Petition filed in Cause No. 44262, which was granted without objection. On May 13, 2015, Chesterton submitted a copy of the OUCC’s Verified Petition from Cause No. 44262 as Late-Filed Exhibit 1.

Based on the applicable law and evidence presented in this Cause, the Commission now finds as follows:

1. Notice and Jurisdiction. Notice of the hearing in this Cause was given and published by the Commission as required by law. 1st American was appointed the receiver for MTA, LLC, d/b/a Centurian Utilities (“Centurian”) by the October 7, 2013 and December 6,

2013 Orders of the Porter County Superior Court in Cause No. 64D02-1201-PL-527.¹ The Utility is a public utility as defined by Ind. Code § 8-1-2-1 and holds a CTA issued by the Commission pursuant to Ind. Code § 8-1-2-89 to provide sewage disposal service to customers in FCF in rural Porter County, Indiana. Ind. Code § 8-1-30-5(f) provides that the receiver appointed by the court has the same rights and duties under Indiana law as a utility company providing sewer service. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. Background and Characteristics of the Utility. The Commission's August 30, 1995 Order in Cause No. 40157 granted a CTA to the Utility to provide rural sewage disposal service to FCF, a community of now approximately 88 homes located in rural Porter County, Indiana. The Utility's facilities consist of a completed wetland cell, lift stations, collection system, mains, sand mounds, and associated facilities for the transport and treatment of sewage collected from its customers. Each customer of the Utility also has a septic tank from which liquid effluent is pumped to a constructed wetland. The effluent flows through gravel and/or is absorbed by the roots of various surface plantings. The effluent leaving the wetlands is then pumped via a lift station to elevated sand mounds for final treatment. Each septic tank is required to have audible and visual alarms to immediately make any pump failure known. The lift station also has visual and audible alarms in addition to an automatic telephone system for the purpose of making any failure of the lift station known.

On May 10, 2000, the OUCC filed a complaint with the Commission, docketed as Cause No. 41741, which alleged generally that FCF Utility operated in an unreasonable, insufficient, unsanitary and negligent manner. After a public hearing, the Commission issued an Interim Order on August 29, 2000, finding, in part, that the service being provided by FCF Utility was not at an acceptable level, and that FCF Utility should take steps to correct problems identified in the proceeding. The Commission ordered FCF Utility to take a number of remedial steps to improve the condition of the utility system. On August 2, 2001, an evidentiary hearing was convened at which a settlement agreement was presented resolving numerous issues and civil litigation between FCF Utility, its customers, and other entities. The Commission issued a Final Order in Cause No. 41741 on August 15, 2001, finding the proposed transfer of the assets and CTA of FCF Utility to Centurian should be approved in accordance with the provisions of the settlement agreement in that Cause. We note the settlement agreement included a requirement that the new owner of the utility construct a second wetland cell by December 31, 2001.

The ISDH issued an Emergency Order to the Utility on August 6, 2011 to abate any public health hazards, citing various violations that resulted in sewage discharge and ponding. On January 11, 2012, the Indiana Attorney General's Office filed a Verified Complaint for Preliminary and Permanent Injunction in the Porter County Superior Court to enforce the ISDH's Emergency Order to abate. On October 26, 2012, the OUCC filed its petition with the

¹ A CTA was issued to Fox Chase Farms Utility, Inc. ("FCF Utility") to provide sewage disposal service to customers in FCF in the August 30, 1995 Order in Cause No. 40157. The CTA held by Fox Chase Utility Company, LLC was transferred to Centurian by the Commission's August 15, 2001 Order in Cause No. 41741. In 2008, all of Centurian's real property was transferred to MTA, LLC without Commission approval. On April 24, 2008, the Indiana Secretary of State administratively dissolved Centurian. See the Commission's Order in Cause No. 44262. Throughout this Order, Centurian Utilities and MTA, LLC are collectively referred to as "the Utility."

Commission in Cause No. 44262 asserting the Utility was not being operated properly and was being operated without a CTA. As a result, the Commission initiated an investigation for the purpose of assuring compliance with Commission Orders, remediation of severe deficiencies, and the provision of reasonably adequate sewage disposal service. On July 31, 2013, the Commission issued an Interim Order in Cause No. 44262, finding that the Utility had severe deficiencies it failed to remedy, and concluded that the case should proceed to hearing on receivership under Ind. Code § 8-1-30-5.

The Commission held a hearing on the issue of the acquisition of the Utility or the appointment of a receiver on August 21, 2013, and issued an Order on October 2, 2013, finding the Attorney General should file an action in a court with jurisdiction, pursuant to Ind. Code § 8-1-30-5(f), seeking the immediate appointment of a receiver for the Utility. On October 7, 2013, the ISDH filed a motion for appointment of a receiver with the Porter County Superior Court. 1st American was appointed receiver for the Utility on October 7, 2013. The Porter County Superior Court issued its *Amended Court Order Appointing Receiver* in Cause No. 64D02-1201-PL-527 on December 6, 2013. 1st American is a receiver with authority over the Utility which furnishes wastewater utility services to approximately 88 homes in FCF in Liberty Township, Valparaiso, Porter County, Indiana.

As discussed above, this Cause was initiated on April 3, 2014. The Commission issued an Order approving, on an interim basis, emergency rates on July 23, 2014.

3. The Receiver. The receiver, 1st American, is an Indiana corporation with a business address of 3408 Enterprise Ave., Valparaiso, Indiana 46383. 1st American was appointed receiver for the Utility by the Porter Superior Court as discussed above.

4. Relief Requested. 1st American initially filed its Petition seeking authority to increase its rates and charges for wastewater utility service on an emergency basis pursuant to Ind. Code § 8-1-2-113. 1st American's Petition indicated that its authorized rates and charges were no longer sufficient to produce revenues to meet the minimum requirements to cover and pay the expenses for running the sewage collection and treatment system at FCF. The Petition noted the Porter County Superior Court issued an injunction in October 2012 requiring the Utility to pump and haul sewage from the system as frequently as needed to keep the discharging sewage from the ground surface. After being appointed receiver, 1st American hired MCO to operate the sewage collection and treatment system. MCO discovered numerous problems with the sewage collection and treatment system's septic mounds and pumps. Petitioner indicated it did not have sufficient resources available to replace and/or repair the pumps. The Petition further noted that when the court appointed 1st American as the receiver, it received no money from the Utility to run the sewage collection and treatment system and 1st American had been billing the residents of FCF \$65.00 per month, but had not been receiving full payment from every customer. 1st American's Petition requested an increase in monthly rates in order to cover existing costs due to the condition of the system. The Commission granted the emergency rates through its July 23, 2014 Order in this Cause and authorized rates of \$94.18 per month on an interim basis, subject to refund.

On April 8, 2015, 1st American filed a motion to amend the caption and also included a request for the Commission to revoke the CTA issued in Cause No. 40157 for the provision of sewage disposal service to FCF by the Utility. 1st American cited as reasons for its request the poor condition of the Utility, lack of interest to operate or purchase the existing sewage treatment facility, and the impending provision of sewage treatment service by Chesterton. 1st American requested the revocation of the CTA become effective once service is extended to FCF by Chesterton.

5. Revocation of CTA.

A. Petitioner's Evidence. Mr. Marshall provided testimony regarding the Petitioner's requested revocation of the CTA. He first discussed the process used to evaluate long-term sewage treatment options available to FCF and the eventual selection of Chesterton as the preferred provider of sewer service. Next, he discussed the lack of interest by any entity in purchasing the Utility and the reasons for the lack of interest. Mr. Marshall then explained why he thought revocation of the CTA was appropriate under the circumstances and when the requested revocation should become effective. Finally, Mr. Marshall explained why revocation was appropriate under Ind. Code § 8-1-2-89.

Mr. Marshall testified that he evaluated six proposals from nearby utilities and operators that had been solicited and received by the POA. Those proposals were from Aqua-Indiana, Inc., Astbury Water Technology, Inc., Chesterton, Damon Run Conservancy District, Utility Services, and NIES Engineering, Inc. The proposals from Utility Services and NIES Engineering, Inc. related solely to consulting services or contract utility operations. Mr. Marshall testified that he engaged a consultant, McMahon Associates, Inc., to review the cost of each proposal, including unstated or hidden costs, and the anticipated overall monthly outlay from each homeowner, and also the time frame for completion of each proposal and the viability of the underlying utility. He and the consultant then met with the Board of the POA and recommended the proposal from Chesterton. The Board of the POA supported the selection of Chesterton. In April 2014, 1st American, the POA, Whispering Sands, and Chesterton executed a MOU for utility services to provide for the construction of a new wastewater system to replace the Utility's existing system. The MOU was contingent on Chesterton obtaining financing from the SRF and the completion of other preliminary steps. Mr. Marshall testified that it is his understanding that conditional approval from SRF has been obtained by Chesterton and Chesterton has also completed all of the other preliminary steps required by the MOU. Mr. Marshall opined that Chesterton offers a desirable long-term solution to FCF's wastewater utility service needs.

An affidavit from Barbara Matthews, President of the POA, dated April 13, 2015, was attached to the testimony of Mr. Marshall as Exhibit JRM-2. Ms. Matthews indicated in her affidavit that she is unaware of any challenges to the Board of the POA's decision to seek service from Chesterton. She also noted that 1st American informed her that the monthly rate to be charged by Chesterton will be approximately \$112.76, which is lower than the \$137.77 originally projected in the MOU.

In regard to the sale of the Utility, Mr. Marshall noted in his testimony that none of the proposals received by the POA from utilities or operators indicated any interest in paying for any

of the Utility's facilities. He testified that Chesterton made it very clear that it does not want or need any of the assets of the Utility. Chesterton has its own treatment system, and will not be utilizing any part of the existing laterals or collection system, but will instead require the installation of new laterals and grinder pumps at each customer's residence. Mr. Marshall indicated he was not surprised that no utility or other entity came forward offering to pay anything for any of the Utility's facilities, given their poor condition. He opined that the Utility does not own any assets of value. He explained the Utility's facilities are in poor condition, and any land owned by the Utility could actually have a negative value due to decommissioning/remediation costs. In addition, there is uncertainty about legal ownership of the Utility's land because it was transferred without Commission approval and because several parcels were sold at Tax Sale and may be past the redemption date.

Mr. Marshall explained why 1st American is requesting revocation of the Utility's CTA. He indicated the first reason to be because no entity has expressed any interest in acquiring and operating the Utility's existing treatment plant. Second, Chesterton will be providing sewage treatment service for FCF and does not need a CTA to provide sewage disposal service as a municipal utility. He testified that once homes begin hooking on to Chesterton's system, the CTA held by the Utility will serve no useful purpose and should therefore be cancelled or revoked. He also explained that 1st American is not requesting that the CTA be revoked immediately. He noted that Chesterton's contract for the construction of facilities allows six months for completion. Mr. Marshall stated that until Chesterton's facilities are in place and able to serve FCF, the CTA should not be revoked. He proposes that the Commission make the CTA revocation effective on a customer-by-customer basis as the homes interconnect with Chesterton's system. He further proposes the full revocation of the CTA should take effect no later than 90 days after Chesterton's facilities have been constructed and are ready to provide service to FCF. He indicated 90 days should provide sufficient time for the residents of FCF to connect to Chesterton's system. He explained that allowing more than 90 days to connect to Chesterton's system once it is ready to provide service would put 1st American in the position of losing revenues through customer attrition to Chesterton, while still having the obligation to keep the Utility functional for the customers still receiving service from the Utility. Revoking the CTA within 90 days of service from Chesterton becoming available to the FCF homes would protect 1st American from running out of revenue needed to operate the Utility.

Mr. Marshall indicated that the Commission should revoke the Utility's CTA because it has failed to furnish reasonably adequate facilities contrary to the requirements of Ind. Code § 8-1-2-89(h). He explained the best evidence of this is the poor condition of the Utility. He also noted the overall system remains in poor condition and on the brink of failure, as explained by the Utility's operator, Mr. Howell, in his testimony. Mr. Marshall also cited to Finding Paragraph No. 5.B. of the Commission's Order in Cause No. 44262, which summarized the evidence as follows:

Intervenors and the OUCC presented a great deal of evidence documenting the fact that the utility system is in a near complete state of failure. Sewage is backing up to the surface and ponding in numerous areas throughout the neighborhood. Mr. Radtke testified that he does not believe the utility system is sufficient to serve the existing customers even if it was operating properly. Mr. Ortel agreed

with this statement and testified that the utility is incapable of being sufficiently repaired in its current state to function properly.

Mr. Marshall also provided testimony opining the requirement of Ind. Code § 8-1-2-89(k) that requires the holder of a CTA to provide reasonably adequate sewage disposal service has not been met. He referred to the Emergency Order to Abate issued by the ISDH on August 16, 2011, which led to a Commission investigation in Cause No. 44262 and eventually led to the appointment of the receiver. Mr. Marshall stated that in his opinion, the health code violations that occurred prior to the appointment of the receiver will likely continue, despite the receiver's efforts to prevent them.

In addition to the testimony of Mr. Marshall, Mr. Howell provided testimony on the condition of the Utility. He testified that the receiver hired MCO beginning on October 15, 2013, to provide operational assistance to the Utility. Prior to that, he twice served as a consultant for the previous two owners of the Utility, providing advice with respect to the repair, maintenance, and operation of the system. He indicated that he has also been engaged by the POA to offer advice and consultation about the treatment system. In his testimony, Mr. Howell explained how the Utility should operate. He stated that each homeowner has a septic tank with an effluent pump. The solids are collected in the septic tank and then pumped and hauled away by a licensed septic hauler. The effluent is pumped out of the tank and into the underground low pressure main system. The low pressure main system can send effluent to one of two places for treatment: the recirculating media filter ("RMF") or a constructed wetland system. As originally conceived, there were supposed to be two constructed wetlands systems for treating all of FCF's effluent, but the second wetland was never built. Instead, the RMF was installed and it is now used as the primary treatment system; the constructed wetland is now used only for backup purposes. Once effluent has been treated, it is pumped to the elevated mound system.

Mr. Howell further stated that the overall system is in poor condition and on the brink of failure. He stated that in order to keep the current system working, MCO is providing repairs as the need arises, but those repairs are stop-gap measures not intended to keep the system operating on a long-term basis. He indicated that sufficient funds to replace elements of the system, instead of repairing them, are needed but unavailable. He also noted that given the age of the Utility's system, the many problems with the elements of the system, and the questionable quality of the initial installation, it does not seem advisable to continue spending money to repair and maintain the existing system. He also provided supplemental testimony that includes Petitioner's Exhibit NH-3, an exhibit consisting of 55 pages of site reports prepared by MCO. The reports document multiple instances of sewage discharges onto the ground, instances of ponding, dosing tank overflows, septic tank overflows, pump problems, faulty floats, faulty alarms, and other electrical problems during the period of October 2013 through April 2015.

In addition to the testimony of Mr. Marshall and Mr. Howell, 1st American also offered the testimony of Michael Mettler. Mr. Mettler testified that the ISDH regulates the installation of onsite sewage treatment systems, such as the Utility. He opined that the Utility was not constructed in accordance with the plans approved by the ISDH and that it did not inform the ISDH of those changes as required by the ISDH rules. He noted that in 2011 the ISDH issued an emergency order to the Utility that required pumping and hauling when sewage discharge

conditions exist. Mr. Mettler also provided Petitioner's Exhibit MM-3, a report documenting a sand mound discharging sewage into Damon Creek Run on December 11, 2014, and an overflow of the wetland/RMF station on April 2, 2015. Mr. Mettler stated that these recent violations provide additional support for the ISDH's view that the Utility, as constructed, is not capable of functioning in a manner that is compliant with Indiana health codes. He stated that he does not believe the Utility can be cost-effectively repaired with the current amount of land available. He noted that the ISDH has met with past owners and operators of the Utility multiple times and has seen proposals on what fixes could be implemented to bring the Utility into compliance. He testified that none of those proposals has corrected the problems facing the Utility. Mr. Mettler concluded that it would be better to connect to the sanitary system either to the north or to the east rather than continue the repair and operation of the existing cluster septic system for FCF. Mr. Mettler stated the ISDH would support the provision of sewage treatment service by a qualified outside entity, such as Chesterton.

B. OUCC's Evidence. Ms. Stull recommended in her testimony that the Commission revoke the Utility's CTA as customers are disconnected from the Utility's collection system and connected to Chesterton's system. She indicated that there will no longer be a need for the Utility to provide service in the territory it was authorized to serve once Chesterton has exercised its statutory authority to extend wastewater service to the residents of FCF.

The OUCC also indicated in its response to the Commission's April 27, 2015 docket entry that it has reviewed the four options related to the provision of sewage disposal service to FCF that were presented to 1st American and the POA. The OUCC also indicated that it has reviewed the MOU between the Chesterton, 1st American, the POA, and Whispering Sands for connection to the Chesterton's system. The OUCC indicated that in light of the preference of the POA and the favorable financing available from the SRF that ultimately benefits the customers, it concluded that Chesterton's proposal to provide sewage disposal service to FCF was the best long-term option.

C. Intervenor's Evidence. Chesterton did not provide any evidence taking a position on the requested revocation of the Utility's CTA. However, Chesterton did provide testimony from two witnesses on issues relevant to 1st American's requested revocation of the Utility's CTA.

Mr. Atherton provided testimony regarding Chesterton's efforts to extend sewage treatment service to FCF. He indicated that the POA contacted Chesterton in early 2014 to see if it would be interested in providing sewage treatment service to FCF. More discussion followed and in April 2014 a MOU was signed by Chesterton, 1st American, the POA, and Whispering Sands. In accordance with the MOU, Chesterton committed to: design, construct, own and maintain the transport system and the on-site improvements for FCF; obtain all permits necessary for the construction of the transport system and on-site improvements; and do all things necessary and desirable to facilitate an SRF loan at 0% for 20 years and also a grant for FCF, including executing all documents required by the SRF and/or Commission in order to complete the project. He also testified that, as described in the MOU, each homeowner in FCF will be responsible for installing a grinder pump and the sewer lateral to connect to Chesterton's

collection system. He indicated the total cost of installing these facilities is estimated to be roughly \$10,000 per homeowner with \$5,500 of that cost being attributed to the cost of a grinder pump. He noted that Chesterton has agreed to waive its \$2,910 tap-in fee and that it sought and will receive SRF funding for the grinder pumps, which means the cost of those pumps will be rolled into the debt service component of each homeowner's monthly bill.

Mr. Atherton stated that Chesterton will not be acquiring any facilities or any other assets owned by the Utility. He explained that Chesterton is not interested in acquiring the existing treatment plant because all sewage collected by Chesterton will be treated at its treatment plant. He further explained that Chesterton has no interest in acquiring any of the existing collection system due to concerns that those facilities were improperly installed and maintained.

Mr. Atherton testified that the corporate limits of Chesterton are approximately three-quarters of a mile from FCF. He noted that the capacity of Chesterton's treatment plant is presently rated at 4.6 million gallons per day ("MGD") and its present treatment flow is roughly 2.2 MGD. Chesterton has enough treatment capacity to handle the additional flow from the 88 homes in FCF, as well as the 330 lots in the Whispering Sands that will be served via the same main being constructed by Chesterton. He explained once facilities have been installed throughout FCF, residents will need to install laterals from their homes to Chesterton's collection system. Until residents have connected to Chesterton's system, they will continue to receive service from the Utility.

6. Authorized Rates. At the preliminary hearing in this Cause on May 27, 2014, Petitioner offered evidence in support of its request for emergency rate relief. The OUCC supported the Petitioner's request for emergency rate relief on an interim basis. The Commission issued an Interim Order in this Cause on July 23, 2014, authorizing 1st American to increase the monthly rate for service from \$65.00 to \$94.18 on an interim basis, subject to refund, pending the issuance of an Order on permanent rate relief.

A. Petitioner's Evidence. In his testimony, Mr. Marshall requests the Commission reaffirm the previously authorized monthly rate of \$94.18. He indicated that currently the monthly rate of \$94.18 is covering the costs of operating the Utility and that as of March 31, 2015, the Utility's checking account balance was \$1,082.13. He explained that the existing rate of \$94.18 may be adequate to cover the Utility's operation and maintenance expenses until Chesterton is able to provide service to FCF. He noted the poor condition of the Utility makes it impossible to predict whether significant unanticipated repairs may become necessary. He also noted that when Chesterton begins providing service to customers, 1st American will be in a position of losing revenues through customer attrition to Chesterton while still having the obligation to keep the Utility functional for those customers still receiving service. Mr. Marshall also expressed a concern that it may be necessary for the Utility to collect from ratepayers sufficient funds to cover the decommissioning/remediation cost of the Utility's facilities once they are no longer used and useful. He also testified that any funds remaining after 1st American's obligations have ended and its expenses have been paid should be returned to the ratepayers.

1st American's response to the Commission's April 30, 2015 docket entry indicates that it is not clear who has legal and financial responsibility for administering the decommissioning of the Utility's wastewater treatment system. 1st American indicated that if it is responsible for decommissioning of the Utility's system once FCF is connected to Chesterton, then it will need to collect sufficient revenues through rates to cover the decommissioning costs. 1st American estimated that the cost of decommissioning the Utility's system will be less than \$5,000.

B. OUCC's Evidence. In her testimony, Ms. Stull indicated the monthly interim rate of \$94.18 is consistent with the Utility's ongoing operating expenses under the receivership. She recommended that the rate be approved as the going-forward rate while the Utility continues to be the provider of service under the receivership. She testified that all monies received by 1st American have been spent on appropriate utility expenses, and currently there is no surplus of monies available to be refunded to the ratepayers. She noted there may be expenses associated with the revocation of the CTA that may only be borne by the ratepayers. She concluded there should be an opportunity for the OUCC to weigh in on whether any such expenses are appropriate to recover from the ratepayers through rates.

C. Intervenor's Evidence. Chesterton did not provide any evidence regarding 1st American's interim rates. However, Mr. Atherton described the rates that Chesterton will be charging the FCF homeowners. He indicated the residents of FCF will be charged the same rate as other similarly situated customers of Chesterton. He explained that because the residents of FCF do not currently receive metered water service they will be billed under Chesterton's flat rate for unmetered use, which at present is \$40.63 per month. There will be an additional line item on the bill of approximately \$72.13 per month to cover the debt service associated with the extension of facilities to FCF.

Mr. Sommer testified regarding the anticipated rate to be charged to the residents of FCF. He explained the rates include a debt component of approximately \$72.13 representing FCF's proportionate share of costs associated with three SRF loans as follows: Series A - loan of \$1,566,000 at 0% interest, Series B - forgiven loan of \$750,000 solely related to service to FCF, and Series C - loan estimated to be \$550,000 at 0% interest to cover the cost of the grinder pumps. He also noted that all funds collected from initial and future customers through the rates will go to buying down the debt. He indicated that the rate may decrease during the course of the repayment of the loans. Chesterton's response to the Commission's April 30, 2015 docket entry indicates that no decommissioning costs are included in the SRF financing.

7. Commission Discussion and Findings.

A. Revocation of CTA. Since granting a CTA to the Utility on August 30, 1995, the Commission has conducted two investigations into the quality of the sewage disposal service being provided to residents of the FCF. The first investigation was initiated on May 10, 2000. In that Cause, the Commission found, in part, that the service being provided by the Utility was not at an acceptable level and the Utility should take steps to correct problems identified in the proceeding. The investigation resulted in the sale of the Utility and its works to Centurian.

The Commission's second investigation was initiated on October 26, 2012, in Cause No. 44262. In Cause No. 44262, the OUCC asked the Commission to determine: whether there were severe deficiencies the Utility failed to remedy; whether Centurian failed to provide reasonable and adequate service; whether Centurian transferred ownership of the utility franchise, works, and system without Commission approval; and whether the Utility was providing sewage disposal service without a CTA. The Commission issued an Interim Order on July 31, 2013, finding that the Utility had severe deficiencies with respect to the technical, financial, and managerial capacity to operate the utility; had severe deficiencies with respect to the physical condition and capacity of the utility plant; and were not compliant with Indiana Law, the orders of the county court, or the Commission's statutes and rules. Because the Utility had severe deficiencies that they failed to remedy, the Commission concluded that a receivership hearing should be conducted pursuant to Ind. Code § 8-1-30-5. The Commission conducted an evidentiary hearing on the issue of the acquisition of the utility or the appointment of a receiver on August 21, 2013. The Commission issued an Order on October 2, 2013, finding in part that the Utility presented no evidence to show that it made any effort to remedy the severe deficiencies in the sewer system or that it had any intention of doing so in the future. Because no entity expressed an interest in immediately acquiring the Utility, we concluded that a receiver should be appointed to operate the Utility. We also encouraged the receiver to work with the POA in seeking a long-term solution. Ultimately, 1st American was appointed as the receiver for the Utility.

The Commission notes that a CTA held by a sewage disposal company may be revoked by the Commission pursuant to Ind. Code §8-1-2-89(k), which provides:

Any certificate of territorial authority may, after notice of hearing and hearing, be revoked by the commission, in whole or in part, for the failure of the holder thereof to furnish reasonably adequate sewage disposal service within the area or areas determined and defined in such certificate of territorial authority, or for the failure of the holder thereof to comply with any applicable order or rule prescribed by the commission in the exercise of its powers under this chapter, or for failure to comply with any term, condition, or limitation of such certificate of territorial authority.

The Commission previously found in both Cause No. 41741 and Cause No. 44262 that evidence of record demonstrated the Utility had severe deficiencies, the service it was providing was not at an acceptable level, and that it should take steps to correct problems identified during the proceedings. In this Cause, the Petitioner and the OUCC have provided substantial evidence that the Utility has continued to experience problems. The evidence shows that the Utility's facilities are in poor condition and on the brink of failure. The Petitioner also offered evidence indicating the system has been repaired so that it can continue to operate, but the repairs are stop-gap measures not intended to keep the system operating on a long-term basis. Based upon the evidence submitted in this Cause, we find the Utility is unable to furnish reasonably adequate sewage disposal service to customers within its CTA. Accordingly, we find the Utility's CTA originally issued in Cause No. 40157 should be revoked pursuant to Ind. Code § 8-1-2-89(k).

Petitioner also presented evidence in this Cause indicating that it worked closely with the POA in considering four proposals to provide sewage disposal services to FCF. The POA participated in the evaluation and selection process and ultimately approved 1st American's

recommendation that Chesterton be the future provider of sewage disposal services for FCF. The OUCC's evidence also supports the proposal that Chesterton's was the best long-term option for sewage disposal service to FCF. Chesterton submitted evidence indicating it has the capacity to provide sewage disposal service to FCF and demonstrating that its corporate limits are less than one mile from FCF. Ind. Code § 36-9-2-18 provides that a municipality may provide for sewage disposal within four miles outside its corporate boundaries. In addition, Ind. Code § 36-9-23-36 provides a municipality with authority to construct, operate, and maintain sewage works within 10 miles outside its corporate boundaries. Accordingly, we find that Chesterton has the ability and requisite authority to provide sewage disposal service to FCF and does not need a CTA in order to provide service under Ind. Code §§ 36-9-2-18 and 36-9-23-36.

1st American also provided testimony suggesting that the revocation of the CTA should not take effect until Chesterton has facilities available and customers are able to hook up. Evidence was also submitted indicating that until FCF's residents have connected to Chesterton's system, they will continue to receive service from the Utility. Once a resident has connected to the Chesterton's system, the resident will no longer be billed by the Utility, but will instead be billed by Chesterton for service. The Petitioner recommends a revocation date of 90 days after the Utility's first customer migrates to Chesterton, in order to avoid the financial difficulties it would face if it has to continue to keep the Utility operational with fewer customers, and reduced revenues. The Commission notes that Ind. Code § 8-1-2-89(c) provides that no sewage disposal company required to hold a CTA shall continue to render sewage disposal service if and after its CTA has been revoked, unless in an Order of revocation or transfer the Commission requires continued service until a new sewage disposal company or municipality actually takes over such service. We find it appropriate for the revocation of the Utility's CTA to become effective 90 days after the first customer from FCF has been connected to Chesterton's system or when all customers of the Utility have connected to Chesterton's system, whichever occurs first. We further find that Chesterton shall provide written notice to 1st American that a residence in FCF has been connected to Chesterton's system. Once 1st American has received such notice, it should cease charging the customer at that residence as of the date the customer initiated service from Chesterton. In addition, 1st American shall submit notification to the Commission, under this Cause, within five business days of the date the first Utility customer connects to Chesterton's system and the date the last customer connects to Chesterton's system.

Based upon the evidence and findings as discussed above, we find the Utility's CTA should be revoked in accordance with Ind. Code § 8-1-2-89. Petitioner shall cease offering sewage disposal service to FCF once Chesterton has completed the extension of its system to FCF and the revocation of the CTA becomes effective.

B. Authorized Rates. The Petitioner provided evidence detailing revenues received and expenses paid by the Utility. The evidence shows that the Utility had a balance of \$1,082.13 on March 31, 2015. The OUCC also provided evidence indicating that all monies received by 1st American have been spent on appropriate utility expenses and currently there is no surplus of monies available to be refunded to the ratepayers. Both the Petitioner and the OUCC presented evidence that the existing monthly rate of \$94.18 approved by the Commission in its July 23, 2014 Interim Emergency Order should be adequate to cover the Utility's operation and maintenance expenses until Chesterton is able to provide service to FCF.

Based on the evidence presented and the discussion above, the Commission finds that the existing monthly rate of \$94.18 per customer that was established on July 23, 2014, by the Commission in its Interim Order, is adequate to cover the Utility's operating and maintenance expenses and should continue in effect until the Utility's customers have migrated to Chesterton. We further find that 1st American shall file a final accounting with the Commission, serving all parties, within 30 days of the effective date of revocation of the CTA. Based upon the final accounting, the Commission will determine if there is a refund due to be returned to the former customers of the Utility.

C. Additional Considerations. As part of this proceeding, the Petitioner requests that the Commission keep this Cause open in order for the Petitioner to recover any potential costs of decommissioning the Utility once Chesterton begins providing service to the residents of FCF. 1st American's response to the Commission's April 30, 2015 docket entry states that it is not clear who has legal and financial responsibility for administering the decommissioning of the Utility's wastewater treatment system. 1st American indicated that if it is responsible for decommissioning of the Utility's system once FCF is connected to Chesterton, then it will need to collect sufficient revenues through rates to cover the decommissioning costs. 1st American also provided evidence indicating that there is uncertainty as to the legal ownership of the Utility's land because it was transferred without Commission approval and several parcels were sold at Tax Sale and may be past the redemption date.

The Commission issued the Utility a CTA to provide sewage disposal service in the service area in Cause No. 40157. In considering whether to keep this Cause open after a Final Order has been issued we note that under Ind. Code § 8-1-2-89, once the Commission has revoked the Utility's CTA, the Commission no longer has jurisdiction over the sewage disposal service. Therefore, once the revocation of the CTA becomes effective the Utility shall be under no further obligation to provide sewage disposal service in the service area governed by the CTA and can no longer charge customers for such service. We also note that 1st American was appointed as the receiver under Ind. Code ch. 32-30-5 by the Porter County Superior Court in Cause No. 64D02-1201-PL-527. The *Amended Court Order Appointing Receiver* stated in Ordering Paragraph 11 that the receiver may petition the court for approval to pay fees and expenses. Further, Ordering Paragraph 14 directs the receiver to propose a plan to the trial court for the sale of the utility and in a manner capable of conveying clear title to a purchaser. Also, Ind. Code § 32-30-5-7 requires approval of the trial court for the receiver to take action regarding the property that is the subject of the receivership. Considering that 1st American provided no evidence that it is under an obligation to incur decommissioning, the uncertainty as to the ownership of the Utility's land, the Porter County Superior Court's Order, and the related statutes, we question whether the Commission would have jurisdiction over the recovery of any costs associated with the decommissioning of the Utility. Accordingly, we find that should 1st American wish to bring this issue before the Commission, it must file a new Petition providing a basis upon which the Commission would have jurisdiction to provide for the recovery of any decommissioning costs once the CTA is revoked.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The CTA issued on August 30, 1995 in Cause No. 40157 to the Utility is revoked with such revocation to take effect in accordance with the findings set forth in Finding Paragraph No. 7.A.
2. Petitioner shall notify the Commission of the connection of the first Utility customer with Chesterton's system within five business days of the date of connection and date the last customer connects to Chesterton's system in accordance with Finding Paragraph No. 7.A.
3. Petitioner is authorized to continue charging a rate of \$94.18 per month, on an interim basis and subject to refund. Upon receiving notice from Chesterton that a residence located in FCF has connected to Chesterton's system, Petitioner shall cease charging the interim monthly rate authorized herein for that residence.
4. Petitioner shall file a final accounting with the Commission within 30 days of the effective date of revocation of the CTA in accordance with Finding Paragraph 7.B.
5. This Order shall be effective on and after the date of its approval.

STEPHAN, HUSTON, WEBER, AND ZIEGNER CONCUR; MAYS-MEDLEY ABSENT:

APPROVED: JUN 30 2015

**I hereby certify that the above is a true
and correct copy of the Order as approved.**



Brenda A. Howe
Secretary to the Commission